

Carrer Rosselló, 214, Esc. A, 1r 1a
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File identification

Resolution of the rights protection procedure no. PT 33/2020, urged against the Health Consortium of Alt Penedès and Garraf.

Background

1.- On 26/07/2020 the Catalan Data Protection Authority received a claim made by Mrs (...) (hereafter, claimant) against the Alt Penedès Health Consortium and Garraf (hereinafter, the Consortium), for the alleged disregard of the request for access to the medical history of his deceased mother, Mrs (...), in exercise of the right of access provided for in the article 15 of Regulation (EU) 2016/679 of the European Parliament and of the Council, of 27/4, relating to the protection of natural persons with regard to the processing of personal data and the free movement thereof (hereinafter, RGPD).

In the letter of claim, the claimant expressed his complaint for not having received a response to the access request he made in writing and sent by burofax on 06/12/2020, and which he will then repeat by mail electronic on 07/23/2020. Specifically, the claimant requested the following:

"(...) That my mother HC's medical history be given to me (...) in the last year, period May 2019 to date of results, INCLUDING:

- *Identity and license number of the doctor responsible for each of the treatments received*
- *Sheet of treatments.*
- *Clinical documentation and medical reports.*
- *Medical order sheets arranged chronologically.*
- *Medical evolution notes.*
- *Nursing progress sheets.*
- *Evolutionary notes of medicine and nursing.*
- *Requests and results of complementary tests.*
- *Informed consents.*
- *Care sheets.*
- *Success report*

-Report from the IT department on the different accesses that exist produced in the aforementioned documents, making special mention in case of having deleted or modified some record previously collected in an access later than the date of the current day of the story.

Issue of all data that has or could be extracted from the computer system, including prescription of medications by date and diagnoses. All this without prejudice to keeping a copy of all the documents requested in the Archives and Documentation Departments, as provided by Law 41/2002.

In the event that any of the cited documents do not exist for some reason specific, I must be reliably informed of the cause of said absence."

2.- By official letter dated 09/15/2020, the Authority transferred the claim to the data protection representative of the Consortium (hereinafter, DPD), so that within 15 days he formulated the allegations that he considered relevant.

3.- On 09/17/2020 the response letter from the DPD was received, accompanied by a letter from the Consortium of 09/16/2020, through which it stated, among others, the following:

"(...) on July 27, 2020, the Citizen Service addressed the complainant by email informing her that she already had at her disposal all the information she had requested from us (we attach document). On August 3, 2020, the complainant came to pick her up in person at our hospital (document attached).

The reason for the deadlines at the same time as responding to the request for documentation is the complexity at the same time as compiling the 30 documents that were prepared to hand over to the complainant, with prior review by those in charge and the management of the center (...)."

As attached documentation, a copy of the email that the Consortium would have sent to the claimant on 07/27/2020, the proof of delivery of documentation from the HC to the claimant on 08/03/2020, and a sheet with the list of documents delivered, where the following could be read:

"Relation of documentation Ms. (...)

HC (...)

Clinical course: from 29/04/2019 to (...)/2020

Registration Report: (...)/2020

Emergency report: 24/07/2019

Laboratory results: 17/07/2019, 07/11/2019, 20/01/2020, 25/01/2020 (2),

25/01/2020, 20/02/2020(3), 29/02/2020(2) and 16/05/2020.

Documentation varies:

- Medication sheet 04/02/2013 and 03/21/2014, medical order 04/02/2013 and sheet of basic nursing care 05/2020.*
- Consent for physical restraints 09/12/2013, 30/03/2014 (revision 13/12/2019) 1 30/03/2014 (revision 25/10/2018 and 13/12/2019).*
- Consent for the placement of a control device in the form of a bracelet on the wrist 04/04/2013.*
- PIAI Residence 01/12/2017 and 18/01/2019*
- Contract and annex to the residence contract."*

4.- On 01/26/2021, the claimant submitted, at the request of this Authority, a new letter, through which he highlighted the following:

"(...) having received the requested documentation from the Health Consortium of Alt Penedès and Garraf last June and having reviewed it, I hereby close this process.

I clarify, as I have been required to do, that my mother died specifically in the Hospital Center (...), where she was cared for through the public square of Residencia (...)."

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Fundamentals of Law

1.- The director of the Catalan Data Protection Authority is competent to resolve this procedure, in accordance with articles 5.b) and 8.2.b) of Law 32/2010, of October 1, of the Catalan Data Protection Authority.

2.- In relation to the applicable regulations, article 15 of the RGPD determines, among others, the next:

"1. The interested party has the right to obtain from the controller confirmation of whether personal data affecting him is being processed, and if so, he has the right to access this data and the following information:

a) The purposes of the treatment.

b) The categories of personal data in question.

c) The recipients or the categories of recipients to whom the personal data have been communicated or will be communicated, in particular recipients in third countries or in international organizations.

d) The planned retention period for personal data. If this is not possible, the criteria used to determine this term.

e) The right to request from the person in charge of the treatment access to the personal data relating to the interested party, to rectify or delete them, to limit the treatment or to oppose it, as well as the right to data portability.

f) The right to present a claim before a control authority.

g) When the personal data has not been obtained from the interested party, any available information about its origin.

h) The existence of automated decisions, including the elaboration of profiles, referred to in article 22, sections 1 and 4, and at least in these cases, it must provide significant information about the logic applied as well as the importance and expected consequences of this treatment for the interested party (...)"

Apart from the RGPD, in the case analyzed here it is also necessary to take into account the applicable health regulations. Specifically, Basic State Law 41/2002, of November 14, on Patient Autonomy, and Catalan Law 21/2000, of December 29, on Patient Autonomy and Rights to Information and Clinical Documentation, the which recognize in articles 18 and 13, respectively, the right of access to the clinical history and to obtain a copy of the data contained therein.

Finally, article 16 of Law 32/2010, regarding the protection of the rights provided for by the regulations on the protection of personal data, provides, among others, in section 1 that: *"the persons interested who are denied, in part or in full, the exercise of their rights of access, rectification, cancellation or opposition, or who may understand that their request has been rejected due to the fact that it has not been resolved within the established deadline, they can submit a claim to the Catalan Data Protection Authority."*

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3.- Regarding the determination of the entity obliged to respond to the access request, it must be taken into account that the person holding the data was entered in the (...), dependent of the Garraf Consortium, receiving public social and health care under the agreement signed on 1/01/2011 between the Consortium, the Catalan Institute of Assistance and Services Social Services (ICASS) and the Catalan Health Service (CatSalut). The ninety-second additional clause of this agreement, relating to the processing of data, establishes that the Consortium acts as the entity in charge of processing, to process, on behalf of CatSalut, the data necessary for the socio-health care entrusted. The eighth point of this clause establishes that: *"CatSalut expressly authorizes the person in charge of the treatment to process the rights of access, rectification, cancellation and opposition exercised by the holders of the personal data subject to the processing order regulated in this contract (...)"*.

In accordance with the above, the Consortium was the entity obliged to respond to the request for access presented by the person now making a claim.

4.- Next it is necessary to analyze whether the Consortium resolved and notified, within the period provided for by the applicable regulations, the right of access exercised by the person making the claim, since precisely the reason for the complaint of the person who initiated the present procedure of rights protection was the fact of not having obtained a response within the period provided for the purpose.

In this regard, it is certified in the proceedings that on 12/06/2020 the Consortium received a burofax sent by the person now claiming, through which he exercised the right of access.

In accordance with article 12.3 RGPD, the person in charge of the treatment - or the person in charge on his behalf - must resolve and notify the access request within a maximum period of one month from the date of receipt of the request. In other words, the deadline available to the Consortium to respond to the access request ended on 07/11/2020.

Well, in the hearing procedure the Consortium has acknowledged that it did not respond to the person here claiming until 27/07/2020 - when it would have sent him an email showing that he had the documentation alone tendered at his disposal-, and it was not until 08/03/2020 that it was delivered. To justify this delay, the Consortium has referred to the complexity it would have entailed to compile the documents delivered, and to the fact that before delivering them they had to be reviewed by those in charge and the Centre's Management.

These reasons put forward by the Consortium could well justify an extension of the deadline of one month. Certainly, article 12.3 RGPD states that this term can be extended by two months if necessary, taking into account the complexity and number of requests. But the precept then points out that the person in charge must inform the interested person of any of these extensions, and do so within a period of one month from the receipt of the request, indicating the reason of the delay Well, this Authority has no record of notifying the claimant of any extension of the deadline, nor has the Consortium alleged it in the corresponding hearing procedure.

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Consequently, it has been proven that Consorci's response to the claimant's request to exercise the right of access was untimely.

5.- Regarding the merits of the claim, on 26/01/2021 the person making the claim submitted a letter to the Authority, stating that, in relation to the documentation delivered by the Consortium: "*doy por cerrado este trámite*", implying that you agree with the information that the Consortium will give you on 08/03/2020. Therefore, it is unnecessary to make any pronouncement on the legal conformity of the response given by the Consortium to the access request that is the subject of the claim.

For all that has been exposed,

RESOLVED

First.- Declare that the Health Consortium of Alt Penedès and Garraf has extemporaneously attended to the request for access made by Mrs (...), having not given an answer within the period of one month established in the applicable regulations, without proceeding to make any other pronouncement regarding the fund once the claimant's right has become effective as indicated in the 5th legal basis.

Second.- Notify this resolution to the Health Consortium of Alt Penedès and Garraf, and to the person making the claim.

Third.- Order the publication of the Resolution on the Authority's website (www.apd.cat), in accordance with article 17 of Law 32/2010, of October 1.

Against this resolution, which puts an end to the administrative process in accordance with articles 26.2 of Law 32/2010, of October 1, of the Catalan Data Protection Authority and 14.3 of Decree 48/2003, of 20 February, by which the Statute of the Catalan Data Protection Agency is approved, the interested parties can file, as an option, an appeal for reinstatement before the director of the Catalan Data Protection Authority, in the period of one month from the day after its notification, in accordance with the provisions of article 123 et seq. of Law 39/2015 or directly file an administrative contentious appeal before the administrative contentious courts of Barcelona, within two months from the day after its notification, in accordance with articles 8, 14 and 46 of Law 29/1998, of July 13, regulating administrative contentious jurisdiction.

Likewise, the interested parties may file any other appeal they deem appropriate for the defense of their interests.

The director,